IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA
Criminal Appeal No.214 of 1992.
Date of decision:12.04.2007

State of H.P. **…..Appellant**

Versus

Tej Ram **…..Respondent.**

Coram
The Hon'ble Mr.Justice **Dev Darshan Sud,J.**

The Hon'ble Mr.Justice **Rajiv Sharma,J.**

Whether approved for reporting ?[1]

For the Appellant: **M/s.P.M. Negi and J.K. Verma, Deputy Advocate Generals.**

For the Respondent: **Mr.R.L. Sood, Senior Advocate with Mr.Vikas Rajput, Advocate.**

Dev Darshan Sud,J. (oral)

This appeal has been preferred by the State against the judgment of the learned Additional Sessions Judge, Kullu, whereby the respondent, who was tried for offences under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "Act"), has been acquitted.

The prosecution case in brief is that on 9.11.1989 ASI Shyam Lal (PW-1) Incharge Police Post, Manikaran accompanied by Head Constable Dhabe Ram, LHC

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

Inder Singh and Constable Chet Ram was on patrolling near village Malana. When they reached village Chowki, they met the respondent. Shyam Lal (PW-1) was suspicious that the accused was carrying contraband and asked him whether he was ready to be searched or wanted his search to be given or ordered to be searched in presence of some gazetted officer. The case of the prosecution further is that he gave his consent to be searched by the police.

On being searched by ASI Shyam Lal (PW-1), the respondent was found in possession of 500 grams of *charas*. The prosecution case is that the contraband was deposited in *Malkhana* and later on sent for analysis to the Forensic Science Laboratory which found the sample to be that of *charas*. The learned trial Court, on consideration of judgments passed by this Court, held that there was non compliance of Section 57 of the Act and, therefore, proceeded to acquit the accused.

Learned Deputy Advocate General appearing for the appellant states that the judgment of the learned trial Court is not in accordance with law, as compliance with the provision is directory and not mandatory. He places reliance on **Gurbax Singh v. State of Haryana (AIR 2001 SUPREME COURT 1002).** It is submitted that the prosecution having established its case beyond reasonable doubt, the

accused is not entitled to acquittal. In **Gurbax Singh** 's case, the Hon'ble Supreme Court has held as under:

> "It is true that provisions of Ss. 52 and 57 are directory. Violation of these provisions would not ipso facto violate the trial or conviction. However, I.O. cannot totally ignore these provisions and such failure will have a bearing on appreciation of evidence regarding arrest of the accused or seizure of the article……."

Their Lordships have held that non compliance to the provisions would have an important bearing on the outcome of the case.

In the present case, the evidence does not establish the proper custody and analysis of the sample of contraband. The affidavit filed by Basanta Ram PW-3 on the point of safe custody of the contraband stating that he had received one sealed parcel is unsatisfactory. Road certificate and the entry in the Malkhana Register have not been produced or proved, nor has the prosecution made any attempt to link the sample with the seized contraband, as the report of the chemical analysis does not mention road certificate number or its receipt from a particular officer.

Although the learned trial Court has held that no independent witnesses were available or could be associated with the search and seizure of the contraband,

but the cross examination of PW-1 Shyam Lal does not establish this factum. He admits that Manikaran is a heavily populated area and the Pradhan, Gram Panchayat and other village officers are available. His bald statement to the effect that no independent witnesses were available cannot be accepted.

From the record we find that no independent witnesses have been associated with the search and seizure, although the respondent was apprehended near a place which was thickly populated as has emerged from the cross examination of PW-1. The Malkhana Register and the Road Certificate have also not been proved on record. The affidavits of PW-5 HC Chandra, PW-4 Ved Singh and PW-3 Basanta Ram used to substantiate the case of the prosecution that the contraband was in his safe custody and was sent for analysis leave much to be desired. In the chain of circumstances, it cannot be said that learned trial Court has erred in holding that non compliance of Section 57 of the Act would entitle the appellant to acquittal.

In the totality of circumstances, we hold that the acquittal of the appellant is justified not only for non compliance of the provisions of Section 57 of the Act but also for failure of the prosecution to establish

beyond reasonable doubt the deposit and analysis of the alleged contraband which has been seized from the appellant. Therefore, we find no merit in the appeal which is dismissed.

(Dev Darshan Sud)
Judge.

April 12, 2007.
(aks/PC)

(Rajiv Sharma)
Judge.